

OFFICIAL ROUTING SLIP

TO	NAME AND ADDRESS	DATE	INITIALS
1	✓ OLC - [REDACTED]		
2			
3	Director of Security		
4			
5	[REDACTED]		
6			

<input type="checkbox"/> ACTION	<input type="checkbox"/> DIRECT REPLY	<input type="checkbox"/> PREPARE REPLY
<input type="checkbox"/> APPROVAL	<input type="checkbox"/> DISPATCH	<input type="checkbox"/> RECOMMENDATION
<input type="checkbox"/> COMMENT	<input type="checkbox"/> FILE	<input type="checkbox"/> RETURN
<input type="checkbox"/> CONCURRENCE	<input type="checkbox"/> INFORMATION	<input type="checkbox"/> SIGNATURE

Remarks:

Herewith our analysis of the Moorhead bill to establish a statutory system for classifying defense information. See also our transmittal note to the Director.

[REDACTED]
RHL

Att

FOLD HERE TO RETURN TO SENDER

FROM: NAME, ADDRESS AND PHONE NO.	DATE
[REDACTED] OGC, 7D07	16 Jan. 74

UNCLASSIFIED	CONFIDENTIAL	SECRET
--------------	--------------	--------

Approved For Release 2002/01/10 : CIA-RDP76M00527R000700230063-0



Approved For Release 2002/01/10 : CIA-RDP76M00527R000700230063-0

5 § 552

THE AGENCIES GENERALLY

Ch. 5

§ 552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public—

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing. Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying—

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and

(C) administrative staff manuals and instructions to staff that affect a member of the public;

unless the materials are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy,

ALLY

Ch. 5

Ch. 5

ADMINISTRATIVE PROCEDURE

5 § 552

rules, opinions, orders,

the public information

and currently publish in public—

old organization and the fees (and in the case of whom, and the methods of submission, make submittals

and method by which its is made, including the nature of the formal procedures avail-

of forms available or the and instructions as to the fees, or examinations;

applicability adopted as administrative policy or interpreted and adopted by the

real of the foregoing. and timely notice of the order be required to resort to be published in the Federal Register for the purpose of this class of persons affected by the Register when incorporation of the Director of

published rules, shall make

ing and dissenting opinion and publication of cases;

interpretations which have been published in the Federal

l instructions to staff

and copies offered for nearly unwarranted incomplete identifying details on, statement of policy,

interpretation, or staff manual or instruction. However, in each case the justification for the deletion shall be explained fully in writing. Each agency also shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if—

(i) it has been indexed and either made available or published as provided by this paragraph; or

(ii) the party has actual and timely notice of the terms thereof.

✓ (3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, on request for identifiable records made in accordance with published rules stating the time, place, fees to the extent authorized by statute, and procedure to be followed, shall make the records promptly available to any person. On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo and the burden is on the agency to sustain its action. In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member. Except as to causes the court considers of greater importance, proceedings before the district court, as authorized by this paragraph, take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way.

(4) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(b) This section does not apply to matters that are—

(1) specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells.

(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress. Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 383; Pub.L. 90-23, § 1, June 5, 1967, 81 Stat. 54.

Historical and Revision Notes

Reviser's Notes

Derivation: United States Code
5 U.S.C. 1002

Revised Statutes and Statutes at Large
June 11, 1946, ch. 324, § 3, 60 Stat. 238.

Explanatory Notes.

In subsection (b) (3), the words "formulated and" are omitted as surplusage. In the last sentence of subsection (b), the words "in any manner" are omitted as surplusage since the prohibition is all inclusive.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 Amendment. Subsec. (a). Pub.L. 90-23 substituted the introductory statement requiring every agency to make available to the public certain information for former introductory provision excepting from disclosure (1) any function of the United States requiring secrecy in the public interest or (2) any matter relating to internal management of an agency, now covered in subsec. (b) (1) and (2) of this section.

Subsec. (a) (1). Pub.L. 90-23 incorporated provisions of: former subsec. (b) (1) in (A), inserting requirement of publication of names of officers as sources of information and provision for public to obtain decisions, and deleting publication

requirement for delegations by the agency of final authority; former subsec. (b) (2), introductory part, in (B); former subsec. (b) (2), concluding part, in (C), inserting publication requirement for rules of procedure and descriptions of forms available or the places at which forms may be obtained; former subsec. (b) (3), introductory part, in (D), inserting requirement of general applicability of substantive rules and interpretations, added clause (E), substituted exemption of any person from failure to resort to any matter or from being adversely affected by any matter required to be published in the Federal Register but not so published for former subsec. (b) (3), concluding part, excepting from publication rules addressed to and served upon named persons in accordance with laws and final sentence reading "A person may not be required to resort to organization or procedure not so published" and added provision deeming matter, which is reasonably available, as published in the Federal Register when such matter is incorporated by reference in the Federal Register with the approval of its Director.

Subsec. (a) (2). Deleted provisions of: provided for public elimination requirement of final opinion; authority for secrecy opinions and order; cause to be held; cited as precedents, superseded by subsec. designated existing (A), including therewith ability of concurring opinions, added provision policy statements in clause (B) and statements in clause (C) instructions in clause (D) personal identifications; test personal privacy; notification thereof, indexing and prohibition not indexed against without actual and terms thereof.

Subsec. (a) (3). Deleted provisions of: and substituted provision; identifiable agency records; able to any person; compliance with rule; and procedure for payment of fees and pre-district court procedure; enforcement by contempt; with court's order; on the agency and do; such proceedings for

Federal Register Act.

Section applicable to of 1949, see section 10

Generally 3
Actual notice 4
Availability of official

Confidential information
Construction 1
Courses, methods, procedures
particular acts of publication
Description of organization
acts of publication 9
Internal management
requiring publication
Matters not requiring
Internal management
Secrets 6
Official agency records
Opinions and orders in

Ch. 5

Ch. 5

ADMINISTRATIVE PROCEDURE

5 § 552

andums or letters
party other than an

files the disclosure
ed invasion of per-

enforcement purposes
arty other than an

operating, or con-
for the use of an
vision of financial

and data, includ-

ng of information
except as specifi-
hority to withhold
. 6, 1966, 80 Stat.

nd Statutes at Large
24, § 3, 60 Stat. 223.

egations by the agen-
y; former subsec. (b)
part, in (B); former
including part, in (C),
on requirement for
and descriptions of
the places at which
lined; former subsec.
ry part, in (D), in-
of general applica-
rules and interpreta-
(E), substituted ex-
son from failure to
or from being ad-
any matter required
the Federal Register
d for former subsec.
part, excepting from
dressed to and served
s in accordance with
see reading "A person
ed to resort to or-
edure not so pub-
provision deeming
asonably available, as
ederal Register when
porated by reference
ster with the approv-

Subsec. (a) (2). Pub.L. 90-23 incorpo-
rated provisions of former subsec. (c).
provided for public copying of records,
eliminated requirement of agency publica-
tion of final opinions or orders and au-
thority for secrecy and withholding of
opinions and orders required for good
cause to be held confidential and not
cited as precedents, latter provision now
superseded by subsec. (b) of this section,
designated existing subsec. (c) as clause
(A), including therein provision for avail-
ability of concurring and dissenting opin-
ions, added provisions for availability of
policy statements and interpretations in
clause (B) and staff manuals and in-
structions in clause (C), deletion of per-
sonal identifications from records to pro-
tect personal privacy with written jus-
tification therefor, and provision for in-
dexing and prohibition of use of records
not indexed against any private party
without actual and timely notice of the
terms thereof.

Subsec. (a) (3). Pub.L. 90-23 incorpo-
rated provisions of former subsec. (d)
and substituted provisions requiring iden-
tifiable agency records to be made avail-
able to any person upon request and
compliance with rules as to time, place,
and procedure for inspection, and pay-
ment of fees and provisions for federal
district court proceedings de novo for
enforcement by contempt of noncompli-
ance with court's orders with the burden
on the agency and docket precedence for
such proceedings for former provisions

requiring matters of official record to be
made available to persons properly and
directly concerned except information held
confidential for good cause shown, the
latter provision now superseded by sub-
sec. (b) of this section.

Subsec. (a) (4). Pub.L. 90-23 added
subsec. (a) (4).

Subsec. (b). Pub.L. 90-23 added sub-
sec. (b) which superseded provisions ex-
cepting from disclosure any function of
the United States requiring secrecy in
the public interest or any matter relating
to internal management of an agency,
formerly contained in former subsec. (a),
final opinions or orders required for
good cause to be held confidential and
not cited as precedents, formerly con-
tained in subsec. (c), and information
held confidential for good cause found,
contained in former subsec. (d) of this
section.

Subsec. (c). Pub.L. 90-23 added subsec.
(c).

Effective Date of 1967 Amendment.
Section 4 of Pub.L. 90-23 provided that:
"This Act [amending this section] shall
be effective July 4, 1967, or on the date
of enactment [June 5, 1967], whichever
is later."

Legislative History. For legislative
history and purpose of Pub.L. 90-23, see
1967 U.S. Code Cong. and Adm. News, p.
—.

Cross References

Federal Register Act, see section 301 et seq. of Title 44, Public Printing and Doc-
uments.

Section applicable to functions exercised under International Wheat Agreement Act
of 1949, see section 1642(i) of Title 7, Agriculture.

Notes of Decisions

Generally 3

Actual notice 4

Availability of official agency records
13

Confidential information 13

Construction 1

Courses, methods, procedures, and forms,
particular acts of publication 10

Description of organization, particular
acts of publication 9

Internal management, matters not
requiring publication 7

Matters not requiring publication 5-7

Internal management 7

Secrets 6

Official agency records 13

Opinions and orders in adjudication 12

Particular acts of publication 8-11

Courses, methods, procedures, and
forms 10

Description of organization 9

Substantive rules and interpretations
11

Purpose 2

Secrets, matters not requiring publication
6

Substantive rules and interpretations,
particular acts of publication 11

Library references

Administrative Law and Procedure
C-408, 301.

Note 1

Library references—Cont'd

Records C-14.

C.J.S. Public Administrative Bodies and Procedure §§ 191, 142.

C.J.S. Records § 35 et seq.

1. Construction

When Congress has been at pains to limit exceptions to requirement that substantive rules be published in Federal Register, even with respect to military and naval matters, courts ought not to broaden these exceptions on hunch that it would have been wiser to provide more suitable means of publication for orders of local, momentary, or emergency nature. *U. S. v. Aarons*, C.A.Conn.1962, 310 F.2d 341.

Publication of specified interpretation in federal register was unnecessary to application of such interpretation as precedent by Federal Power Commission for classification of expenditures for advertisements to specified account, where order for such classification related solely to proper accounting expenditures for eight specific advertisements and was directed solely to certain private electric utilities. *Southwestern Elec. Power Co. v. Federal Power Commission*, C.A. 5, 1962, 304 F.2d 20, certiorari denied 82 S.Ct. 292, 371 U.S. 324, 9 L.Ed.2d 232.

Congressional directive regarding procedure to be followed in issuance of agency regulations must be strictly complied with since issuance of regulations is in effect an exercise of delegated legislative power. *Hotch v. U. S.*, 1954, 212 F.2d 280, 14 Alaska 594.

2. Purpose

This subchapter and chapter 7 of this title and the Federal Register Act, section 301 et seq. of Title 44, are more than mere recording statutes whose function is solely to give constructive notice to persons who do not have actual notice of certain agency rules because such sections set up procedure which must be followed in order for agency rulings to be given force of law. *Hotch v. U. S.*, 1954, 212 F.2d 280, 14 Alaska 594.

This section was intended to provide a "shield" for a petitioner before an agency, to protect him from being penalized for failing to resort to unpublished methods of procedure, rather than as a "sword" by which such petitioner could strike down agency's order on ground that agency had not authorized itself to issue that type of order by publishing statement in Federal Register. *T. S. C. Motor Freight Lines, Inc. v. U. S.*, D. C.Tex.1960, 186 F.Supp. 777, affirmed 81 S.Ct. 1356, 366 U.S. 419, 6 L.Ed.2d 357.

Congress intended that administrative housekeeping regulations should bow to constitutional supremacy. *U. S. v. C. O. Mason, Inc.*, 1961, 51 CCPA 107, certiorari denied 85 S.Ct. 718, 370 U.S. 999, 13 L.Ed.2d 701.

3. Generally

Disclosure of administrative agency proceedings is generally favored. *F. C. C. v. Schreiber*, Cal.1965, 85 S.Ct. 1459, 381 U.S. 279, 14 L.Ed.2d 383.

4. Actual notice

The purpose of provision of this section that no person shall be required to resort to organization or procedure not published is not thwarted by application of unpublished rule of Federal Communications Commission which temporarily suspends opportunity to file an application for broadcasting license, particularly where person unable to file under the rule had actual knowledge of his inability. *Kessler v. F. C. C.*, 1963, 326 F.2d 673, 117 U.S.App.D.C. 130.

Publication of Coast Guard order restricting access to portion of harbor during launching of submarine was required by this section as well as Federal Register Act, section 303 of Title 44, but under this section as under section 303 of Title 44, failure to publish did not immunize defendants, who had actual knowledge of order, from prosecution for violating it. *U. S. v. Aarons*, C.A.Conn. 1962, 310 F.2d 341.

This section and the Federal Register Act, section 301 et seq. of Title 44, require publication, irrespective of actual notice as a prerequisite to issuance of a regulation making certain acts criminal. *Hotch v. U. S.*, 1954, 212 F.2d 280, 14 Alaska 594.

5. Matters not requiring publication

Provisions of this section regarding publication of rules do not apply to court enforcement of obligations imposed at common law, even though court action is initiated by administrative agency. *Reich v. Webb*, C.A.Cal.1964, 236 F.2d 153, certiorari denied 85 S.Ct. 890, 350 U.S. 915, 13 L.Ed.2d 809.

That Canadian corporations seeking to enjoin having their names placed on Securities and Exchange Commission's "Canadian Restricted List" had actual notice of administrative hearing procedure for examination of challenges to listing before bringing their suit did not make their failure to take advantage of such procedure a failure to exhaust administrative

Ch. 5

Ch. 5

ADMIN

tive remedies, where published procedure in Federal Register was not until after suit was brought. *Status Min. Corp. (N.P.L.) v. Exchange Commission*, 136 F.2d 617, 114 U.S.App.D.C. 27.

Press release that Federal Agency and Civil Aeronautics Board's rendition of airline reasonably adjacent community airport was an announcement of policy-making furtherance of policy-making Federal Aviation Agency in expedient that Board express race, and was not such exercise making or adjudicatory function as would require publication in Register. *Airport Commission v. City of North Carolina*, 1962, 300 F.2d 155.

In view of fact that Federal Board's authority to issue subpoenas is derived from section 15, Board's noncompliance with publication provisions of this title did not disentitle Board to issue subpoenas. *Kilgore Nat. Bank v. Petroleum Bd.*, C.A.Tex.1954, 212 F.2d 280, 14 Alaska 594.

6. — Secrets

Special Coast Guard notice access to portion of harbor during launching of submarine was "rule," not "agency," within chapter and chapter 7 of title 44, and notice was not within exception allowing nonpublication when required, since whatever the effect of submarine's design, there was no measures employed for protection during launching. *U. S. v. Aarons*, 1962, 310 F.2d 341.

Insofar as regulations requiring submission to naval installation security procedures applied to Factory in District of Columbia were not required to be published in Federal Register in order to be validly, Cafeteria and Workers Union, Local 473, A.M.T. v. Federal Bureau of Investigation, 1960, 284 F.2d 117, 30 App.D.C. 39, affirmed 81 S.Ct. 686, 6 L.Ed.2d 1230, motion for rehearing denied 83 S.Ct. 22, 30 L.Ed.2d 70.

7. — Internal management

That certification of photostatic copies of checks as true by employee of General Accounting Office, in controversy between the United States and someone without the agency

LX Ch. 5 Ch. 5 ADMINISTRATIVE PROCEDURE 5 § 552

Note 8

ended that administrative regulations should bow to supremacy. U. S. v. C. O. 864, 51 CCPA 107, cert. 35 S.Ct. 718, 379 U.S. 900.

f administrative agency generally favored. F. C. Cal.1963, 85 S.Ct. 1459, 381 L.Ed.2d 333.

of provision of this section shall be required to location or procedure not thwarted by application of rule of Federal Communications which temporarily inability to file an application for license, particularly unable to file under actual knowledge of his intent. U. S. v. F. C. C., 1963, 326 U.S.App.D.C. 130.

Coast Guard order re- to portion of harbor of submarine was re- section as well as Federal section 305 of Title 44, but on as under section 305 sure to publish did not adants, who had actual der, from prosecution for S. v. Aarons, C.A.Conn. 4.

and the Federal Register et seq. of Title 44, re- n, irrespective of actual requisite to issuance of a g certain acts criminal. 1954, 212 F.2d 280, 14

requiring publication

this section regarding rules do not apply to at of obligations imposed even though court action administrative agency. C.A.Cal.1964, 336 F.2d 12d 800.

corporations seeking to their names placed on Exchange Commission's cted List" had actual no- tive hearing procedure of challenges to listing their suit did not make take advantage of such re to exhaust administra-

tive remedies, where publication of such procedure in Federal Register did not occur until after suit was instituted. Kulash Min. Corp. (N.P.L.) v. Securities and Exchange Commission, 1962, 369 F.2d 417, 114 U.S.App.D.C. 27.

Press release that Federal Aviation Agency and Civil Aeronautics Board favored rendition of airline service to reasonably adjacent communities through one airport was an announcement in furtherance of policy-making functions of Federal Aviation Agency in which it was expedient that Board express its concurrence, and was not such exercise of rule making or adjudicatory function of Board as would require publication in Federal Register. Airport Commission of Forsyth County, N. C. v. C. A. B., C.A.4, 1962, 300 F.2d 183.

In view of fact that Federal Petroleum Board's authority to issue and enforce subpoenas is derived from section 713h of Title 15, Board's noncompliance with publication provisions of this section did not disentitle Board to issue and enforce subpoena. Kilgore Nat. Bank v. Federal Petroleum Bd., C.A.Tex.1954, 209 F.2d 537.

G. — Secrets

Special Coast Guard notice prohibiting access to portion of harbor during launching of submarine was "rule," and Coast Guard was "agency," within this subchapter and chapter 7 of this title and notice was not within exception allowing nonpublication when secrecy is required, since whatever the secrecy as to submarine's design, there was none as to measures employed for protecting her on launching. U. S. v. Aarons, C.A.Conn. 1962, 310 F.2d 341.

Insofar as regulations respecting admittance to naval installations and security procedures applied to Naval Gun Factory in District of Columbia, they were not required to be published in Federal Register in order to establish their validity. Cafeteria and Restaurant Workers Union, Local 473, AFL-CIO v. McElroy, 1960, 264 F.2d 173, 109 U.S.App.D.C. 39, affirmed 81 S.Ct. 1743, 367 U.S. 880, 6 L.Ed.2d 1230, motion denied 81 S.Ct. 1912, 366 U.S. 956, 6 L.Ed.2d 1251, rehearing denied 82 S.Ct. 22, 363 U.S. 689, 7 L.Ed.2d 70.

H. — Internal management

That certification of photostatic copies of checks as true by employee of Comptroller General was to be used outside of General Accounting Office, and in controversy between the United States and someone without the agency, did not

change its character as merely an incident of "internal management" within this section exempting matters relating to internal management from requirement of publication in Federal Register. U. S. v. Hayes, C.A.Va.1963, 325 F.2d 397.

Order of Coast Guard closing area of harbor in connection with launching of submarine was not one relating to internal management of Coast Guard, within this section omitting rules relating solely to internal management of agency from requirement of publication in Federal Register. U. S. v. Aarons, C.A.Conn. 1962, 310 F.2d 341.

Interstate Commerce Commission's procedure of notation voting, otherwise valid, was not rendered invalid because it was not published in the Federal Register. T. S. C. Motor Freight Lines, Inc. v. U. S., D.C.Tex.1960, 186 F.Supp. 777, affirmed 81 S.Ct. 1356, 366 U.S. 419, 6 L.Ed.2d 337.

I. Particular acts of publication

Where Federal Communications Commission's "freeze order" of May 10, 1962, was filed for publication with the National Archives on May 15, 1962 at 8:45 a. m., pursuant to Federal Register Act, section 301 et seq. of Title 44, and it was published in Register on May 16, 1962, requirement of this section was thereby met. Kessler v. F. C. C., 1963, 326 F.2d 673, 117 U.S.App.D.C. 130.

The 1944 order published by administrator in the Federal Register, reciting order was promulgated under his authority as head of the Food and Drug Administration of his agency and reciting authority under sections 241, 343(h) (2), 371(f) of Title 21, established valid regulations applicable to standards of fill in the oyster canning industry until superseded by subsequent legislation or regulations adopted in compliance with duly ordained standards of administrative procedure. Willapa Point Oysters v. Ewing, C.A.9, 1949, 174 F.2d 676, certiorari denied 70 S.Ct. 101, 323 U.S. 800, 94 L.Ed. 527, rehearing denied 70 S.Ct. 793, 329 U.S. 945, 94 L.Ed. 1360.

Where complaint before Post Office Department was filed and prosecuted by assistant general counsel in charge of the Department's fraud division and final decision on appeal was made by the Department's acting general counsel, who signed fraud order, the fraud order was unlawful because the regulations under which the order was obtained violated this section in that such regulations did not spell out the relationship between the prosecuting officer and the deciding of-

5 § 552

THE AGENCIES GENERALLY

Ch. 5

Ch. 5

Note 8

ficer. *G. J. Howard Co. v. Cassidy*, D. C.N.Y.1958, 163 F.Supp. 538.

This subchapter and chapter 7 of this title not only prohibit commingling of functions of adjudication and prosecution, but they also require publication by administrative department of its organization on one hand, and its procedure on other hand. *Pinkus v. Reilly*, D.C.N.J.1957, 157 F.Supp. 548.

Where instruction, which was issued by the Secretary of Agriculture under the Agricultural Adjustment Act, section 1375 of Title 7, and which required wheat producers to aid government representatives to measure wheat acreage on farms of producers, was not published in the Federal Register or otherwise brought to attention of wheat producers, instruction was not binding on them. *U. S. v. Morelock*, D.C.Md.1954, 124 F.Supp. 932.

2. — Description of organization

Federal Communications Commission in publishing statement of organization apprising petitioners that staff members might participate in preparation of Commission's decision with respect to future rates complied with requirements of this section that agency publish description of its central and field organization and statements of general course by which its functions are channeled and determined. *Wilson & Co. v. U. S.*, C.A. Ill.1964, 335 F.2d 785, cause remanded 86 S.Ct. 643, 382 U.S. 434, 15 L.Ed.2d 523.

Under this section requiring federal agencies to publish in the Federal Register descriptions of their central and field organizations including delegations by the agency of final authority and the established places at which and methods whereby public may secure information thereon and further providing that no person shall in any manner be required to resort to organization or procedure not so published, when a postmaster issued a fraud order after an administrative hearing, though the post-office department had not complied with such statutory provisions, the order was void. *Low v. Thomas*, D.C.Pa.1958, 163 F.Supp. 945.

10. — Courses, methods, procedures, and forms

Federal Trade Commission rule, as published in Federal Register, setting time limit for filing initial reports of compliance with commission orders and asserting the commission's right to require filing of further compliance reports thereafter, satisfied requirements of this

section for publication in federal register of statements of rules, organization and procedure. *U. S. v. Morton Salt Co.*, Ill. 1950, 70 S.Ct. 357, 338 U.S. 632, 94 L.Ed. 401.

Comptroller of the Currency, who approved establishment of branch of national bank under section 36 of Title 12, was obliged to state and currently publish in the Federal Register the general course and method by which his functions were channeled and determined and to publish or make available to public inspection all final opinions or orders in the adjudication. *First Nat. Bank of Smithfield, N. C. v. Saxon*, C. A.N.C.1935, 352 F.2d 267.

Where duty of Assistant General Counsel for Post Office Department to file complaints in proceedings involving use of mail to defraud was published in Federal Register as "procedures", but Federal Register contained no publication whatever of any regulations of Post Office Department covering "organization", proceeding by Post Office Department against a person for use of mail to defraud was invalid when person was required to resort to organization of Department not published in Federal Register. *Pinkus v. Reilly*, D.C.N.J.1957, 157 F.Supp. 548.

11. — Substantive rules and interpretations

Order of Coast Guard restricting access to portion of harbor during launching of submarine did not come within exception from requirement of publication in Federal Register for rules addressed to and served upon named persons in accordance with law. *U. S. v. Aarons*, C.A. Conn.1962, 310 F.2d 341.

There is no requirement that regulations be issued construing every general standard administered by an administrative agency, but only that if any are issued they be published. *Gras v. Beechie*, D.C.Tex.1963, 221 F.Supp. 422.

Publication in Federal Register of order of Interstate Commerce Commission providing new form of logs for drivers of motor carriers, accompanied by statement therein that new form and instructions as to its use by drivers were filed with order and made part thereof, when considered with service on carrier of copy of order, including specimen form of log, was sufficient compliance with publication requirements and order was consequently effective as to driver charged with violation of order. *U. S. v. Reid*, D.C.Md.1953, 110 F.Supp. 253.

12. Opinions and orders

To be within requirement regarding publication in Federal Register a step in a proceeding must affect private rights more directly than does its records, and it must be such that knowledge of its contents is necessary to keep such outside interested agency's requirements subject within its compass in conduct of their business and to instruct them in relation to agency of an impartial consideration. *U. S. v. Hayes*, C. A. 307.

Office of Price Administration orders affecting retroactive alcohol to government purposes were not "orders of adjudication of cases" within this section requiring rules to be published to public inspection, as in statutory definition "future effect", and, therefore, were effective even if published or made available to public inspection. *R. F. C. v. Products Corp.*, D.C. Tex.1963, 363 F.2d 600.

12. Official agency records

Even if head of government refuses to permit disclosure of material, ultimate determination remains with the court. *Braswell Motor Freight*, Tex.1963, 363 F.2d 600.

Federal Trade Commission request for subpoena

§ 553. Rule

(a) This section except to the extent

(1) a military States; or

(2) a matter to public property

(b) General notice the Federal Register either personally or in accordance with law

(1) a statement making procedure

Ch. 5

Ch. 5

ADMINISTRATIVE PROCEDURE

5 § 553

ion in federal register
ales, organization and
Morion Salt Co., 110,
325 U.S. 632, 94 L.Ed.

ne Curreney, who ap-
nt of branch of na-
section 36 of Title 12,
state and currently
eral Register the gen-
method by which his
neled and determined
r make available to
l final opinions or or-
dication. First Nat.
, N. C. v. Saxon, C.
267.

Assistant General Coun-
Department to file
edings involving use
d was published in
as "procedures", but
outained no publica-
y regulations of Post
covering "organi-
g by Post Office
a person for use of
invalid when person
ort to organization of
ublished in Federal
Reilly, D.C.N.J.1937,

rules and interpre-

ard restricting access
or during launching
t come within excep-
ent of publication in
r rules addressed to
ed persons in accord-
S. v. Aaron, C.A.
341.

irement that regula-
struing every general
ed by an administra-
ly that if any are is-
hed. Gras v. Beechie,
Supp. 422.

ederal Register of or-
ommerce Commission
of logs for drivers of
ompanied by state-
ew form and instruc-
by drivers were filed
le part thereof, when
vice on carrier of
ading specimen form
ent compliance with
ents and order was
ive as to driver
on of order. U. S. v.
0 F.Supp. 233.

12. Opinions and orders in adjudication

To be within requirement of this section regarding publication in Federal Register a step in agency's operation must affect private or public interests more directly than does the attestation of its records, and it must be of such a nature that knowledge of it is needed to keep such outside interests informed of agency's requirements in respect to any subject within its competence, as a guide in conduct of their day-to-day affairs, and to instruct them in regard to presentation to agency of any such subject for impartial consideration or action thereon. U. S. v. Hayes, C.A.Va.1963, 325 F.2d 297.

Office of Price Administration price orders affecting retroactively sales of ethyl alcohol to government for wartime purposes were not "orders in the adjudication of cases" or "rules" within this section requiring such orders and all rules to be published or made available to public inspection, and were not, within statutory definition of rule, orders of "future effect", and, therefore, such orders were effective even if they were not published or made available to public inspection. R. F. C. v. United Distillers Products Corp., D.C.Conn.1952, 113 F. Supp. 463, affirmed 204 F.2d 511.

13. Official agency records

Even if head of government department refuses to permit disclosure of subpoenaed material, ultimate determination of privilege remains with the courts. Davis v. Braswell Motor Freight Lines, Inc., C.A. Tex.1963, 363 F.2d 600.

Federal Trade Commission's rejection of request for subpoenas ad testificandum

pursuant to unpublished rule was not clearly in defiance of this section, for purpose of determining whether federal District Court had jurisdiction to entertain action for judgment declaring refusing to honor the request to be violative of this section which provides that save as otherwise required, matters of official record shall be made available to persons concerned except information held confidential for good cause. R. H. Macy & Co. v. Tinley, D.C.D.C.1965, 219 F.Supp. 773.

Business secrets should be kept from sight and knowledge of competitors of businesses against which Federal Trade Commission has issued a complaint so far as it is practical to do so in discharge of Commission's responsibilities. Graber Mfg. Co. v. Dixon, D.C.D.C.1963, 223 F. Supp. 1020.

Where plaintiffs, against whom Federal Trade Commission issued a complaint charging violation of Clayton Act, sections 12-27 of Title 15, produced certain documents pursuant to subpoena and showed that public disclosure of information contained in one of documents would cause serious injury to their business, there was good cause for holding such information confidential and it was an abuse of discretion to refuse request to grant permanent in camera status to such document. Id.

Public interest in open hearings on complaint issued by Federal Trade Commission places on parties charged, who have produced documents pursuant to subpoena, burden of showing that such documents should be received in confidence. Id.

§ 553. Rule making

(a) This section applies, according to the provisions thereof, except to the extent that there is involved—

(1) a military or foreign affairs function of the United States; or

(2) a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.

(b) General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include—

(1) a statement of the time, place, and nature of public rule making proceedings;

Approved For Release 2002/01/10 : CIA-RDP76M00527R000700230063-0



Approved For Release 2002/01/10 : CIA-RDP76M00527R000700230063-0

16 January 1974

Index to Subsections to 5 U. S. C. 522
added by H. R. 12004

(d)(1)	p. 2
(i)	"
(ii)	"
(iii)	"
(2)(A) (i)	"
(ii)	3
(iii)	"
(B) (i)	"
(ii)	4
(3)(A)	"
(B)	5
(4)	"
(5)(A)	"
(B)	"
(C)	"
(D)	6
(e)(1)(A)	"
(i)	"
(ii)	"
(B)	7
(i)	"
(ii)	"
(C)	"
(2)	8
(A) (i)	"
(ii)	"
(B) (i)	"
(ii)	9
(iii)	"
(C) (i)	"
(ii)	"
(iii)	"
(3)	10
(A)	"
(B)	"
(C)	"
(D)	"

Approved For Release 2002/01/10 : CIA-RDP76M00527R000700230063-0
(Continued)

(e)(4)(A)	p. 10
(B)	11
(C)	13
(5)(A)	"
(B)	"
(i)	"
(ii)	"
(iii)	14
(f) (1)	"
(2)(A)	"
(i)	"
(ii)	"
(B) (i)	15
(I)	"
(II)	"
(III)	"
(ii)	"
(c) / apparently this should be capital C /	"
(3)(A)	16
(B)	"
(C)	"
(D)	"
(4)(A)	"
(B) (i)	"
(ii)	17
(C)	"
(D)	"
(5)(A)	"
(B)	18
(i)	"
(ii)	"
(iii)	"
(iv)	19
(v)	"
(6)(A)	"
(B)	"
(C) (i)	"
(ii)	20
(iii)	"
(iv)	"
(D)	"
(E)	21
(F)	"

Approved For Release 2002/01/10 : CIA-RDP76M00527R000700230063-0

(Continued)

(f) (6)(G)	p. 21
(H)	"
(I)	22
(g)(1)(A)	"
(i)	"
(ii)	"
(iii)	23
(B)	"
(2)	"
(3)	"
(4)(A)	"
(B)	24
(5)(A)	"
(B)	"
(6)(A)	25
(B)	"
(C)	"
(7)(A)	26
(i)	"
(ii)	"
(iii)	"
(8)(A)	"
(B)	27
(C)	27

Approved For Release 2002/01/10 : CIA-RDP76M00527R000700230063-0



Approved For Release 2002/01/10 : CIA-RDP76M00527R000700230063-0